

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application under and in terms of Article 126 of the Constitution of Sri Lanka.

1. B.V.M.W.Kumarasiri,  
No. 105/1, Egodawatta,  
Bellana.
2. H.M.T.S. Herath,  
No. 69, Nallamudawa Road,  
Andagala, Eppawala.
3. R.D.H. Mendis,  
No. 219, Mellawagedara,  
Mellawagedara,
4. C.G.A.S.N. Wijerathne,  
No. 31/A, Rotarigama,  
Inamaluwa.
5. M.A.U.N. Kumara,  
Temple Road, Mahimpitiya,  
Thalahitimulla, Kuliapitiya.
6. N.K. Godage,  
E-92, Nikapitiya,  
Ussapitiya.
7. V.M.U.K.K. Gunarathne,  
No. 86/1, "Darshana",  
Wewala, Bokkawala,  
Kandy.
8. D.M. Ariyaratne,  
Yaya 2/68,  
Uwathissapura, Mapakadathuwa,  
Mahiyanganaya.
9. A.A.J.S. Aathawuda,  
No. 48, Miriheliya, Alawwa.

10. R.D.R.S. Chandrakumara, No. 3/22,  
Dewala Road, Katuwana, Homagama.
11. M.V.P. Swaranareka,  
No. 362/A/3, Udupila North,  
Delgoda.
12. B.A.Indika,  
No. 479, Sisil Mawatha,  
Katunayake.
13. K.K. Fernando,  
No. 121, Galamulla,  
Sinhapura, Horombawa.
14. N.W.J.N. Damayanthi,  
2<sup>nd</sup> Lane,  
Chaminda Kumara Mawatha,  
Wehera, Kurunegala.
15. H.A.C.J. Hettiarachchi,  
“Janaka Sevana”, Makuddala,  
Helamada, Kegalle.
16. S.M.S. Priyangani,  
No. 2B, Alugolla Lane,  
Welagedara, Badulla.

*Petitioners*

S.C.(F.R.) Application 277/09

Vs.

1. M.M.N.D. Bandara,  
Secretary, Ministry of Education,  
Isurupaya, Battaramulla.
2. Dayasiri Fernando,  
Chairman,
3. Palitha M. Kumarasinghe,  
Member,

4. S.C. Mannapperuma,  
Member.
  5. Ananda Senevirathne,  
Member.
  6. N.H. Pathirana,  
Member.
  7. S. Thillai Nadaraja,  
Member.
  8. M.D.W. Ariyawansa,  
Member
  9. A. Mohammed Nahiya,  
Member
  10. Sirimavo A. Wijerathne,  
Member  
the 2<sup>nd</sup> to 10<sup>th</sup> Respondents,  
all of Public Service Commission,  
No. 177, Nawala Road,  
Narahenpita,  
Colombo 05.
  11. G.D.L. Gunawardene,  
Secretary,  
Public Service Commission,  
No. 356/B, Carville Place,  
Galle Road.  
Colombo 03.
  12. Hon. Attorney General,  
Attorney -General's Department,  
Colombo 12.
- Respondents.*
13. H.M. Gunasekera,  
Secretary,  
Ministry of Education,  
Isurupaya,  
Battaramulla.
  14. N. Ariyadasa Cooray,  
Secretary,

Public Service Commission,  
No. 177, Nawala Road,  
Narahenpita,  
Colombo 05.

*Added Respondents.*

**BEFORE** : **S. Marsoof, P.C., J.,**  
**K. Sripavan, J.**  
**B.Aluwihare, P.C.,J.**

**COUNSEL** : J.C. Weliamuna for Petitioners.  
Ms. Viveka Siriwardene, S.S.C.for the 2<sup>nd</sup> to  
10<sup>th</sup> and 12<sup>th</sup> to 14<sup>th</sup> Respondents.

**ARGUED ON** : 17.01.2014

**DECIDED ON** : 28.03.2014

**K. SRIPAVAN, J.**

The Secretary, Ministry of Education by notice dated 27.01.2006 published in Gazette Notification bearing No. 1430 marked **P1** called for applications for the Open Competitive Examination (hereinafter referred to as “the examination”) for recruitment to Class III of the Sri Lanka Educational Administrative Service. The cadre of Class III of the said Service is composed of “General Cadre” and “Special Cadre”. In terms of the Gazette Notification **P1**, a candidate should satisfy the following basic qualifications to apply for the said Open Competitive Examination.

- (I) Should be a citizen of Sri Lanka,
- (II) Should have obtained a degree from a recognized University or should have passed any professional or other examination deemed by the Public Service Commission to be of equivalent standard,
- (iii) Should not be less than 22 years and not more than 32 years of age as on 27.02.2006.

In the instant application, the Petitioners seek to challenge, inter alia, the purported actions taken by the Respondents to arbitrarily change the criteria and /or the non-selection/non-appointment of the Petitioners to the Special Cadre of Class III of the Sri Lanka Educational Administrative Service (hereinafter referred to as the "SLEAS".)

The Petitioners allege that the examination was held in two Parts, namely, Part I and Part II. The Part I examination was held on 09.07.2006. Clause 3 of P1 stipulates that only those candidates who scored a minimum of 60% marks in each question paper in Part I would become eligible to sit for Part II. The Petitioners state that upon securing the requisite marks at the Part I examination they were called upon to sit for the Part II examination held on 22.07.2007. The aggregate marks revealed to the Petitioners after the said examination were as follows :-

1 <sup>st</sup> Petitioner	-	254 marks
2 <sup>nd</sup> Petitioner	-	243 marks
3 <sup>rd</sup> Petitioner	-	243 marks
4 <sup>th</sup> Petitioner	-	243 marks
5 <sup>th</sup> Petitioner	-	241 marks
6 <sup>th</sup> Petitioner	-	241 marks
7 <sup>th</sup> Petitioner	-	235 marks
8 <sup>th</sup> Petitioner	-	233 marks
9 <sup>th</sup> Petitioner	-	233 marks
10 <sup>th</sup> Petitioner	-	231 marks
11 <sup>th</sup> Petitioner	-	231 marks
12 <sup>th</sup> Petitioner	-	228 marks
13 <sup>th</sup> Petitioner	-	224 marks
14 <sup>th</sup> Petitioner	-	236 marks
15 <sup>th</sup> Petitioner	-	233 marks
16 <sup>th</sup> Petitioner	-	249 marks

It is the contention of the Petitioners that by letter dated 11.08.2008 marked **P4** they were called for an interview to be held on 05.09.2008. It was at the interview, the Petitioners were surprisingly told that there were certain additions made to the original Gazette Notification **P1** setting out explicitly the degrees/diplomas that would be considered for the “Special Cadre” *vis-a-vis* the fields of “Special Education” and “Planning”. The Petitioners specifically allege at Paragraph 16 of the Petition that the following matters transpired at the interview :

- “(a) The 1<sup>st</sup> to 9<sup>th</sup> Petitioners who had been selected and called for interviews for the Special Cadre in the field of “Information Technology” were told that although they had studied subjects which relate to Information Technology, those cannot be considered as major subjects of their respective degrees.
- (b) The 10<sup>st</sup> to 13<sup>th</sup> Petitioners who had been selected and called for interviews for the Special Cadre in the field of “Special Education” were told that they had certain problems regarding the qualifications in terms of the amended criteria. The 10<sup>th</sup> to 13<sup>th</sup> Petitioners were not aware of the said amended criteria. Further, the respective interview panels pointed out that these Petitioners could have changed the Special Cadre field that they had applied for. Then, the Petitioners opted to change the Special Cadre field to “Planning”. The respective interview panels however, did not make any decision thereof and therefore these Petitioners believed that they would be considered for the Special Cadre positions in the field of “Special Education”.
- (c) The 14<sup>th</sup> Petitioner who had been selected and called for an interview for the Special Cadre in the field of “Art” was told that the subjects that she had studied for her Bachelor of Arts degree obtained from the Faculty of Arts of the University of Peradeniya were not relevant to the field she had applied for.

- (d) The 15<sup>th</sup> Petitioner who had been selected and called for an interview for the Special Cadre in the field of “English” was told that although he had studied English for his degree that cannot be considered as a major subject of the degree.
- (e) The 16<sup>th</sup> Petitioner who had been selected and called for interview for the Special Cadre in the field of “Science” was told that she can be given a Special Cadre appointment in the field of “Agriculture”.

Learned Senior State Counsel appearing for the Respondents took up inter alia, the following objections/defences to the maintainability of this application by the Petitioners :

- (a) that the application of the Petitioners challenging the addendum marked **P6** is time barred in that it had been filed more than one month after the infringement, complained of, in contravention of Article 126(2)
- (b) that the addendum made to Gazette Notification marked **P1** by a subsequent Gazette Notification marked **P6** caused no prejudice to any of the Petitioners.
- (c) that the Petitioners did not either possess a degree or the requisite qualifications in the field they had applied for or do not have sufficient marks to be selected to the field they had applied for.

**Time Bar**

It is common ground that the Petitioners were called for interviews on 05.09.2008. It was at the interview, the Petitioners were told that certain additions were made to the Gazette Notification **P1** by incorporating the degrees and/or

Post Graduate diplomas required for the applicants in the “Special Cadre” in the fields of “Special Education” and “Planning”. Thus, the Petitioners became aware of the “addendum” to **P1** as far back as in September 2008. However, no steps were taken by the Petitioners to challenge the said “addendum” on the basis that it violated the fundamental rights of the Petitioners.

It is necessary to state at the outset that I am not inclined to favour the conduct of the Petitioners who participated at the interview without any protest, fully availed themselves to the interview process and then when they observed that selection had gone against them, came forward to challenge the addendum **P6** on the ground of unknown disability on their part. The participation, without challenging the addendum **P6** with full knowledge of all the circumstances, preclude the Petitioners from objecting to the selection process embodied in **P1** and **P6** by an application filed seven months thereafter, namely, on 07.04.2009. The conferment of exclusive jurisdiction in terms of Article 126(1) and the imposition of a time-limit in Article 126(2) demonstrate with certainty the need for the prompt invocation of the jurisdiction of this Court. The addendum embodied in **P6** therefore cannot be challenged in the proceedings.

**Petitioners do not possess the required qualifications or adequate marks**

Learned Senior State Counsel drew the attention of Court to Clause 5(ii) and 5(iii) of Part II in **P1** which reads as follows :

“5 (ii) *In addition to the General Cadre, applications can be forwarded for vacancies in fields mentioned in para (III) in Special Cadre given below. A candidate can apply for the General Cadre and for two fields relevant to the Special Cadre. In the case of applications made under the Special Cadre, the candidate should have studied and*



*passed the subjects for the degree relevant to the field applied for*

(iii) *Special subject areas and the relevant Code Numbers are indicated below:*

*The subject area applied for and the relevant Code Number should be stated in the place specified in the application:*

*(a) General Cadre II*

*(b) Special Cadre*

*Subject area*

<i>English</i>	<i>21</i>
<i>Mathematics</i>	<i>22</i>
<i>Science</i>	<i>23</i>
<i>Art</i>	<i>24</i>
<i>Music (Oriental)</i>	<i>25</i>
<i>Music (Western)</i>	<i>26</i>
<i>Dancing</i>	<i>27</i>
<i>Agriculture</i>	<i>29</i>
<i>Commerce</i>	<i>30</i>
<i>Special Education</i>	<i>33</i>
<i>Planning</i>	<i>34</i>
<i>Arabic</i>	<i>35</i>
<i>Information Technology</i>	<i>36 “</i>

Thus, it is abundantly clear that when applications were called under the “Special Cadre”, the candidates should have studied and passed the subjects relevant to the field applied for, at degree level. It is true that by P6 an addendum was introduced indicating the degrees and/or Post Graduate diplomas necessary in order to consider the candidates in the “Special Cadre” in the fields of “Special Education” and “Planning”. Except the 10<sup>th</sup> to the 13<sup>th</sup> Petitioners, who preferred

their applications in the “Special Cadre” in the field of “Special Education” the others applied for different subject areas not caught up by the addendum **P6**. Thus, there is nothing on the face of the applications of the Petitioners (other than the 10<sup>th</sup> to the 13<sup>th</sup> Petitioners) brought to the notice of Court that there is some undisclosed or unknown criteria by which they were subjected to discrimination. While good faith and knowledge on the part of the First Respondent who published the Gazette Notifications **P1** and **P6**, on the orders of the Public Service Commission is to be presumed, in order to give the maximum benefit to the Petitioners, I proceed to consider their grievance based on the Gazette Notification **P1** only.

Learned Senior State Counsel at the hearing before us informed that the Public Service Commission had no objection to appoint the 3<sup>rd</sup> Petitioner namely, R.D.H. Mendis to the SLEAS- Class III with effect from a date as determined by the Supreme Court. Senior State Counsel stated that the Public Service Commission was of the view that the 3<sup>rd</sup> Petitioner's B.A. degree with “Computer Studies” as one of the main subjects was relevant to the field of “Information Technology” and therefore he could be deemed to have studied and passed the subjects for his degree relevant to the field applied for as required by **P1**.

The 1<sup>st</sup> Petitioner selected the fields of “Information Technology” and “Mathematics” in the “Special Cadre”. She further claims that she has studied, amongst others, Management Information System, Computer Science and Statistical Methods for her Bachelor of Arts degree. The Public Service Commission is in doubt whether the subjects offered for her degree are relevant to the field applied for. It is also noted that the 1<sup>st</sup> Petitioner had offered Mathematics for Social Science, Basic Mathematics and Advanced Mathematics for the degree examination and had obtained a Second Class (Upper Division) pass. In these circumstances, good conscience and a fair and reasonable approach,

demand that she be appointed to the SLEAS Class III as she had obtained 254 marks when the cut-off marks for “Mathematics” is 242. Furthermore, the 1<sup>st</sup> Petitioner is entitled to be appointed, on the basis of the same yardstick used by the Public Service Commission to appoint the 3<sup>rd</sup> Petitioner to the SLEAS-Class III. If the 1<sup>st</sup> Petitioner is not treated in accordance with the essential requirements of justice and fair play she would be denied the equal protection of the law. It must be remembered that when Parliament confers upon a body, functions which involve making decisions, there is a presumption that Parliament intended that the said body should act fairly towards those persons who would be affected by its decision.

The 2<sup>nd</sup> Petitioner selected the fields of “Information Technology” and “Science”. According to the degree Certificate available, her major subjects were Physics and Chemistry. However, she could not be selected for the “Science” field as the cut off marks for Science is 247 whereas she had obtained only 243 marks. She could not have been considered for “Information Technology” as she had only offered “Basic Computing” as one of the minor subjects.

The 4<sup>th</sup> Petitioner selected the fields of “Information Technology” and “Mathematics”. She has obtained an ordinary pass in the Bachelor of Science (Business Administration) degree and has not offered any subjects relevant to the field applied for.

The 5<sup>th</sup> Petitioner selected the fields of “Information Technology” and “Commerce”. He has obtained an ordinary pass in the Bachelor of Commerce (Special) degree and has not offered any subjects relating to “Information Technology”. He could not be considered for the field of “Commerce” as the cut off marks for “Commerce” is 255 whereas he had obtained only 241.

The 6<sup>th</sup> Petitioner selected the fields of “Information Technology” and “Agriculture”. She obtained a Second Class (Lower Division) in Bachelor of Science degree in Agriculture. However, she did not offer any subjects relevant to the field of “Information Technology” for her degree. In so far as the field of “Agriculture” is concerned, she had obtained 241 marks whereas the cut off marks for “Agriculture” is 251.

The 7<sup>th</sup> Petitioner chose the field of “Information Technology” only. She got a Second Class (Lower Division) pass in the Bachelor of Science (Business Management) Special degree. The major subjects she offered were in the fields of “Business Management” and “Financial Marketing and Production Management”. However, “Information Technology” is one of the minor subjects she had passed for her degree out of 25 course units. Though she had obtained 235 marks at the written examination when in fact the cut off marks for “Information Technology” is 217, the Public Service Commission was correct, in arriving at a decision that the only course unit in “Information Technology” may not be sufficient to achieve the required proficiency in the field of “Information Technology”. There is no material before Court to show the grading obtained by her in “Information Technology”. Thus, I am unable to hold that the Public Service Commission acted unreasonably or unjustly ignoring the concepts of justice and equality which are the cornerstones of the Constitution.

The 8<sup>th</sup> Petitioner too chose the field of “Information Technology” only. He got a Second Class Honours (Upper Division) Pass in the Arts degree Examination in Political Science. One of the course units he offered for his degree were “Writing Skills and Computer Literacy”. I have no hesitation in concluding that the subject of “Writing Skills and Computer Literacy” cannot be equated to the field of “Information Technology”. Though the cut off marks for “Information Technology”

is 217, the subject offered for his degree is quite conceivably irrelevant to be considered for the field of "Information Technology".

The 9<sup>th</sup> Petitioner selected the fields of "Information Technology" and "Mathematics". He obtained a General degree in Science with a Second Class (Lower Division). However, two of the subjects offered by him were "Computer Applications in Business and Industry" and "Computing I and II". These two minor subjects out of 29 subjects may not be sufficient to fall within the definition of "subjects relevant to the field of "Information Technology" even though, he has scored 233 marks at the written examination. He disqualifies to be considered for "Mathematics" as the cut off marks for the field of "Mathematics" is 242.

The 10<sup>th</sup> Petitioner selected the fields of "Information Technology" and "Commerce". He was admitted to the Special degree of Bachelor of Business Management (Human Resources) and earned the required standard for a pass. None of the subjects he offered relate to "Special Education". He could not be considered for the field of "Commerce" as he had got 231 marks only, which is very much less than the cut off marks for "Commerce", namely, 255.

The 11<sup>th</sup> Petitioner opted the field of "Special Education" only. She possess a Bachelor of Arts degree with a Second Class (Upper Division). Unfortunately, the subjects she offered relate to Economics, Sociology, Mass Communication etc. with no relevance to the field of "Special Education".

The 12<sup>th</sup> Petitioner chose the fields of "Special Education" and "Mathematics". She reached the standard required for a pass offering Pure Mathematics, Social Statistics and Philosophy for the Bachelor of Arts degree Examination. Hence, she did not possess any subjects relating to the field of "Special Education". The marks

she obtained, namely, 228 is not sufficient for her to be considered to the field of “Mathematics”.

The 13<sup>th</sup> Petitioner applied to the fields of “Special Education” and “Commerce”. He was conferred with a Bachelor's degree in Business Management (Human Resources) with Second Class (Lower Division). The subjects offered for his degree are not relevant to the field of “Special Education”. The marks he obtained namely, 224 at the examination is not sufficient to consider to the field of “Commerce”.

The 14<sup>th</sup> Petitioner opted the field of “Art” only. She possesses a degree in Bachelor of Arts with one course unit titled “Art and Architecture of Sri Lanka” out of 32 course units. She is disqualified on the basis of not possessing subjects for her degree relevant to the field applied for.

The 15<sup>th</sup> Petitioner chose the field of “English”. He has a Bachelor of Special Arts degree in Geography. He has offered English “Lower Intermediate Level”, “Intermediate Level” and for “Academic purposes”. It would appear that with the above-mentioned subjects he had not acquired the required standard in English to be considered to the field of “English” as he has obtained 'C' grading only. There may be impelling reasons for the Public Service Commission to arrive at such a finding. In the absence of any allegation of “mala fides” against a clear transgression of the accepted guiding principles and gross violation of constitutional norms, it is unsafe for the Court to interfere with the findings of the Public Service Commission, though there is room to hold differing opinions. The Court would be reluctant to substitute its view unless it is proved that the decision of the Public Service Commission is grossly unreasonable, in the sense that no reasonable body can come to such a finding.

The 16<sup>th</sup> Petitioner selected the fields of “Science” and “Agriculture”. She has a degree in Bachelor of the Science in Agriculture with a Second Class (Lower Division). The subjects she offered relate to “Agriculture” and “Agricultural Extension” and did not relate to the field of “Science”. Hence, she was not considered to the field of “Science”. However, the marks she obtained, namely, 249 is not sufficient for her to be considered to the field of “Agriculture”, which had a cut off marks of 251.

### **Conclusion**

On the basis of the foregoing analysis, I declare that non-appointment of the 1<sup>st</sup> and the 3<sup>rd</sup> Petitioners to the “Special Cadre” of Class III of the SLEAS violated their fundamental right guaranteed in terms of Article 12(1) of the Constitution. I therefore direct the Public Service Commission to appoint the 1<sup>st</sup> and the 3<sup>rd</sup> Petitioners to Class III of the SLEAS to the fields of “Mathematics” and “Information Technology” respectively, with effect from the date on which the appointments of other candidates were made based on the Gazette Notification marked **P1**.

The seniority of the 1<sup>st</sup> and the 3<sup>rd</sup> Petitioners are to be reckoned from the date on which they would be appointed to Class III of the SLEAS, with all the benefits accruing to them. So long as the Constitution stands as it is, it is the duty of this Court to uphold the fundamental rights and thereby honour its sacred obligation to the persons affected. The reliefs sought by the 2<sup>nd</sup> and 4<sup>th</sup> to 16<sup>th</sup> Petitioners are refused. I make no order as to costs.

I must emphasize that selection of candidates to the SLEAS is definitely a matter of public importance, urgently calling for proper safeguards in the selection criteria. If adequate safeguards are provided in a precise manner, it would really facilitate the “Appointing Authority” to adopt the contemplated procedures necessary to

gather sufficient data/material to enable the said Authority to arrive at a proper conclusion in regard to the matters submitted for its determination. A criteria indicating the prescribed subjects relevant to the field applied for with clear and specific guidelines degenerates into arbitrariness, erases uncertainty as to the procedure and grants one of the common law protections which Article 12(1) guarantees. The rule of law demands that everything the "Appointing Authority" does falls within a framework of recognized rules and principles which restrict the exercise of any discretionary power. The object of having such a criteria further guarantees confidence in the minds of those who seek to enter the SLEAS and whose ambition is to serve the nation in shaping the future "Educational Administration" more efficient and effective.

**JUDGE OF THE SUPREME COURT**

**S. MARSOOF, P.C., J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**B. ALUWIHARE, P.C., J.**

I agree.

**JUDGE OF THE SUPREME COURT**































